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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
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Item 2 of the agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement*/ submitted by the Indian Law Resource Centre,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 August 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. In this submission, the Indian Law Resource Center, on behalf of Western Shoshone individuals and groups, specifies for the Sub-Commission on the Promotion and Protection of Human Rights the grave violations that the United States (the "U.S.") is committing against the human rights and fundamental freedoms of the Western Shoshone people, and urges the Sub-Commission to take appropriate action.

Facts

2. The Western Shoshone are an indigenous people who have lived since time immemorial in a territory that is now included in Nevada and parts of California, Idaho and Utah. On these ancestral lands they continue to hunt, fish and graze cattle in accordance with their traditional, subsistence lifestyle. They also gather plants from the lands for medicinal and religious purposes and perform spiritual exercises at sacred sites. In 1863, the Western Shoshone signed a Treaty of Peace and Friendship (the "Treaty of Ruby Valley") with the U.S., in which the U.S. affirmed the boundaries of the Western Shoshone ancestral land. The treaty did not cede title to any Western Shoshone lands, but instead merely gave to the U.S. limited access and use for specified purposes.

3. Despite the Treaty of Ruby Valley, the U.S. is denying Western Shoshone rights to ancestral lands, having determined in a discriminatory manner that those rights have been extinguished. The proceedings upon which the U.S. relies for this assertion are those of the Indian Claims Commission (ICC), an administrative body created by the U.S. Congress in 1946 to partially compensate Native Americans for lands and resources that had been taken from them. In 1951, a claim was brought before this commission and concluded in the U.S. Court of Claims, purportedly on behalf of the entire Western Shoshone people. These proceedings resulted in a meagre monetary award for the presumed extinguishment of Western Shoshone title to land.

4. For the Western Shoshone, who continue to use and occupy those same lands, this decision was a travesty. The judgment funds have never been distributed because the Western Shoshone have refused to accept money for land that they never in fact sold, ceded, lost or abandoned. Furthermore, the issue of whether Western Shoshone land rights were truly extinguished was never actually litigated, and Western Shoshone individuals and groups were not permitted to intervene in the proceedings to contest the presumed extinguishment of title.

5. Based on this discriminatory determination, the U.S. is denying Western Shoshone people access to and use of ancestral lands. It is enforcing trespass and impoundment notices against the Western Shoshone, taking actions to physically remove their livestock, and prosecuting them for traditional fishing and hunting practices as well as other customary land uses. At the same time, the U.S. is allowing non-indigenous people to come onto and use those lands, often for purposes that severely harm the land, including gold mining, nuclear waste storage and military activities. The U.S. government's continued denial of Western Shoshone rights to ancestral lands threatens irreparable harm to Western Shoshone subsistence, culture and way of life.

6. The U.S. has escalated the threat against the Western Shoshone by recently beginning deliberations that are intended to lead to the passage of two legislative bills that would

critically impair the land, resource and cultural rights of the Western Shoshone people. The first bill would authorize the U.S. Secretary of Interior to dispose of supposedly "public" lands in the state of Nevada – including lands upon which the Western Shoshone rely – by selling it in open bidding to mining, ranching and other private interests. The second bill would distribute the monetary award for the purported extinguishment of Western Shoshone interests in land and thereby further undermine the assertion of those interests.

7. Various groups of the Western Shoshone people have sought to prevent the discriminatory actions of the U.S. in a variety of forums, to date without success. The Dann Band of Western Shoshone pursued a case through the U.S. court system to the United States Supreme Court. When that failed to bring relief, the Danns petitioned the Inter-American Commission on Human Rights, a body of the Organization of American States. That commission is still reviewing the case. On two occasions it has issued precautionary measures against the U.S., both of which the U.S. has largely ignored. The Yomba Shoshone and Ely Shoshone tribes have recently submitted a request for urgent action to the United Nations Committee on the Elimination of Racial Discrimination.

Violations of Internationally Recognized Human Rights and Fundamental Freedoms

8. The United States' actions violate the Western Shoshone peoples' rights of control and ownership of their ancestral lands, rights that are critical to Western Shoshone cultural and economic survival. The Universal Declaration of Human Rights states that "(e)veryone has the right to own property alone as well as in association with others," and that "(n)o one shall be arbitrarily deprived of his property." (article 17). Indigenous property rights on the basis of traditional use and occupancy are specifically recognized by International Labour Organisation Convention No. 169. (articles 13, 14, 15). Additionally, both the Draft United Nations Declaration on the Rights of Indigenous Peoples and the Proposed American Declaration on the Rights of Indigenous Peoples affirm the right of indigenous people to own, develop, control, and use the lands and resources they have traditionally owned.

9. The United States' discriminatory treatment of Western Shoshone rights in land and resources, as compared to its more favourable treatment of non-indigenous property rights, also violates articles 1, 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, to which the U.S. is a party. That Convention specifically addresses property rights, and mandates that "State parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... rights [including property rights]."

10. Furthermore, the lack of procedural safeguards, and the unequal processes for the Western Shoshone vis-vis what non-indigenous people ordinarily receive in the U.S. courts establish a violation of the right to judicial equality and due process. Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination states that "States parties shall assure to everyone within their jurisdiction effective protection and remedies...against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention..." The Universal Declaration of Human Rights states that "Everyone has the right to an effective remedy by the competent national

tribunals for acts violating the fundamental rights granted him by the constitution or by law." (article 10).

11. Western Shoshone culture, which is inextricably linked to the land, is also at imminent risk due to the United States' actions. The right to the enjoyment of one's culture is necessary to the effective exercise of human rights and is recognized internationally. Article 27 of the International Covenant on Civil and Political Rights, to which the United States is a party, affirms the right of persons belonging to "ethnic, linguistic or religious minorities..., in community with other members of their group, to enjoy their own culture, to profess and practise their own religion (and) to use their own language." The Human Rights Committee has found article 27 to protect indigenous peoples cultural interests in land and natural resources. (See Hum. Rts. Comm, General Comment on article 27).

12. The United States, moreover, is violating the Western Shoshone peoples' right to self-determination, by interfering with the Western Shoshone peoples' enjoyment of their ancestral lands, by depriving the Western Shoshone people of their means of subsistence, and by failing to adequately consult with the Western Shoshone people regarding any decisions affecting those ancestral lands. The right to self determination is affirmed in the International Covenant on Civil and Political Rights, which states that "(a)ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development...In no case may a people be deprived of its own means of subsistence." (article 1).

Request to the Sub-Commission

13. The Western Shoshone people urge the members of the Sub-Commission to take note of the serious nature of this situation and to call upon the United States to rescind immediately all impoundment and trespass notices against Western Shoshone people, to refrain from prosecuting Western Shoshone hunters, to take measures to ensure that mining and other activities on Western Shoshone ancestral land does not impede their physical and cultural survival, to withdraw the current proposed legislation described above, and to proceed forthwith to resolve Western Shoshone land issues through negotiations with Western Shoshone leaders.